IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1844 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VASANTBHAI SHANTILAL BHIL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MS RUKHSANA M PATHAN for Appellant(s) : 1,
MR PD BHATTE, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/12/2007

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 27.8.2004 rendered by learned Additonal Sessions Judge, Rajpipla in Sessions

Case No.85/2004.

2. The appellant was the original accused charged with offence punishable under Section 302 of the Indian Penal Code. Learned Additional Sessions Judge convicted him under Section 304 Part-II of the Indian Penal Code and sentenced him to rigorous imprisonment of seven years and fine of Rs. 500/-.

3. As per the prosecution case, between the appellant and one Vitthalbhai, there was earlier dispute about the boundaries between their fields. On the date of incident, buffalo of the appellant had entered into the field of the deceased. Grandson of the deceased had driven away the buffalo. The appellant therefore, went to the house of deceased on 6.3.2004 at about 11 O' clock. There was a quarrel and the appellant caused injuries to the deceased on chest by throwing stones. The injury caused death of Vitthalbhai. The appellant was therefore, charged under Section 302 of the Indian Penal Code.

4. To prove the charge, prosecution has examined several witnesses.

5. Sushilaben Vitthalbhai Tadvi-PW2 was examined at exh.12. She is the daughter of deceased. She stated that on the date of incident at about 11

O' clock when she was at home, the appellant had come using foul language. Along with her, her mother-in-law and sister-in-law were at home. Her father had gone to the field. He returned home at 11 O' clock after which the appellant had come. They had some exchange of words. The appellant got excited and hit the deceased with a stone on his chest. He had thrown four stones in all. Her father had fallen down and died there only. The incident had taken place only 7ft. away from the house. Her father was aged about 60 years.

6. Version of Sushilaben-PW2 was supported by Bachiben-PW4 who was examined at exh.17. She is the wife of deceased. As per her deposition, she was at home on the date of incident. Her husband had returned from the field at 11 O' clock at which time, the appellant had come there using foul language. When stopped from using bad language by her husband, the appellant picked up a stone from the ground and hit her husband on the chest. Her husband fell down and died. She, her daughter-Sushilaben and daughter-in-law-Sarojben rushed to the spot.

7. Sarojben Mangubhai Tadvi-PW5, exh.18 also gave similar version of the incident. She is daughter-in-law of the deceased. She also stated that the incident took place at about 11 O' clock in the morning after her father-in-law

came back from the field. The appellant fought with him and started throwing stones at her father-in-law causing fatal injuries.

8. Dr. Manojkumar Virendraprasad Miksha-PW9 was examined at exh.24. He has carried out the postmortem of the body of the deceased. He found that no external injuries were seen on the body. However, on the left side of the rib cage, ribs no. 6 and 7 had been fractured. Upon internal examination, in addition to finding that ribs were fractured, he also found that left lung was punctured. As per his opinion, death was on account of rupture of the lung. He stated that the injury was in ordinary course of nature sufficient to cause death.

8.1 In his cross examination, he agreed that if a person is hit with three to four stones, same would cause injuries at different places. He stated that deceased had only one injury. He agreed that if four stones which were part of the Mudammal articles were hit, same would cause different injuries. He agreed that there were no external injuries on the body of the deceased. He however, denied that injury could be caused if a person falls down on a hard substance like wood.

9. On the basis of above evidence, learned Additional Sessions Judge found enough material

to convict the appellant under Section 304 Part-II of the Indian Penal Code. Significantly, in the judgement, learned Judge concluded that the accused had thrown only one stone at the deceased on his chest which caused the death.

10. Insofar as involvement of the appellant is concerned, there seems very little doubt. There are consistent, clear and cogent eyewitness account of the manner in which the incident took place. As noted, Sushilaben-PW2, daughter of the deceased was present when the appellant went to the house of the deceased at about 11 O' clock in the morning and picked up a quarrel. There were earlier disputes about the boundaries between the two fields. On the date of incident also, there was some misunderstanding about the buffalo of the appellant venturing into the field of the deceased. After some verbal altercation, the appellant picked up a stone and threw on the deceased which hit him on the chest. This version was also repeated by Bachiben-PW4 and Sarojben-PW5. All of them were eyewitness since they were present at their house at 11 O' clock in the morning.

11. The presence of these witnesses was natural. They were doing household work in the morning part of the day when deceased had just returned from the field. Nothing substantial has come out in cross examination of these witnesses as to

shake the reliability. The injury described by the eyewitness corroborates to the medical evidence. In the postmortem, Dr. Manojkumar-PW9 found ribs no. 6 and 7 fractured and left side of the lung ruptured which ultimately caused death of the deceased.

12. In view of the such clear and overwhelming evidence, guilt of the appellant stands established.

13. Though the witness tried to suggest that the appellant had thrown four stones at the deceased, there appears to be some exaggeration in this regard. As per the witness, the appellant threw a stone on the chest of the deceased upon which he fell down and died. Whether the death was instantaneous or not, fact remains that as per the witnesses deceased fell on the ground the moment one stone was thrown. It is doubtful whether the appellant had thrown more stones after the first blow. In fact the medical evidence suggests that there is only one serious injury. It would therefore, appear that the appellant had thrown only one stone which hit the deceased on his chest. Even the learned Additional Sessions Judge has come to such conclusion in his impugned judgement. Under the circumstances I find that conviction of the appellant under Section 304 Part-II of the Indian Penal Code is not justified.

14. Section 304 Part-II of the Indian Penal Code prescribed punishment if death is caused with a act done by the accused with a knowledge that it is likely to cause death but without any intention to cause death or to cause any bodily injury as is likely to cause death. From the incident narrated by the eyewitness, it cannot be stated that the appellant committed the act with a knowledge that such an act is likely to cause death.

15. Under the circumstances, conviction of the appellant is converted into one under Section 325 of the Indian Penal Code which prescribes a maximum punishment of seven years. Considering the nature of incident and sudden quarrel between the appellant and the deceased, it would not be appropriate to award maximum punishment prescribed for the said offence. I therefore, find that the sentence of seven years of rigorous imprisonment imposed by the learned Additional Sessions Judge is required to be reduced.

16. It may be noted that as per the jail record made available by learned APP, the appellant has already suffered imprisonment in excess of three years and nine months including the set off but excluding the remissions. It would therefore, be just and reasonable to award the sentence which is already undergone by the appellant.

17.In the result, following order is passed :

1) Conviction of the appellant is converted to one under Section 325 of the Indian Penal Code.

2) His sentence is reduced to one already undergone by him.

3) Directions for payment of fine remains unaltered.

18.The appeal is disposed of accordingly.

(Akil Kureshi,J.)

(raghu)